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ONE HUNDRED ELEVENTH CONGRESS  
**Select Committee on**  
**Energy Independence and Global Warming**  
**U.S. House of Representatives**  
**Washington, DC 20515**

EDWARD J. MARKEY, MASSACHUSETTS  
CHAIRMAN

April 3, 2009

The Honorable Steven Chu  
Secretary  
U.S. Department of Energy  
1000 Independence, SW  
Washington, DC 20585

Dear Mr. Secretary:

I am writing to request clarification of the Administration's policies regarding the protection of intellectual property rights (IPR). After a recent tour of the Brookhaven National Laboratory, you suggested that America should drop IPR on some technologies.

Technological advancement is the only possible path to energy independence and reduced emissions. Increased IPR protection, not waivers, is the only way to spur these advancements.

Arbitrary caps and exorbitant taxes will have no direct effect on emissions. Unless the Obama Administration is prepared to sacrifice America's way of life, technological development is the only means to achieve its stated goals of large-scale emissions reductions. Developments of this scale will require massive investment. Investments will only occur if businesses, entrepreneurs, and venture capitalists worldwide know that their risks can be rewarded. Every week, I hear potentially ground-breaking ideas to increase efficiency or produce renewable energy. Individually, the odds of any one of these ideas succeeding are likely small, but as long as the proper market-based incentives exist, the odds of all of them failing are almost zero. Ingenuity is our path forward.

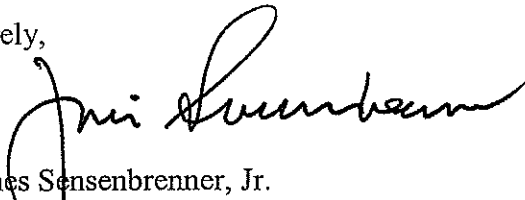
Sharing intellectual property rights is exactly the wrong approach. Not surprisingly, business leaders are already alarmed. The *New York Times* reported that Steve Fludder, the head of the "Ecomagination" division of General Electric, "aggressively refuted" the suggestion that waiving IPR would spread technology. Mr. Fludder asked, "I mean, why would anybody invest in anything that they would have to just give away?"

New technologies absolutely must reach developing countries, but if IPR protections are waived, there will be no technologies to share. Left unexplained, your statements could already work to stifle innovation.

In addition, your proposal would likely violate our treaty obligations under the General Agreement on Tariffs and Trade (GATT). Article 27.1 of the Agreement on Trade Related Intellectual Property Issues (TRIPS) states that “[p]atents shall be available and enjoyable without discrimination as to the place of invention, the field of technology or whether the product is imported or produced locally.” In other words, we can’t provide greater patent protection for certain kinds of technology and discriminate against other kinds, as your statement suggests.

Please provide clarification of the Administration’s policies in this critical area by April 30, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "F. James Sensenbrenner, Jr.", written over a horizontal line.

F. James Sensenbrenner, Jr.  
Member of Congress  
Ranking Republican Member, Select Committee on Energy Independence and Global Warming

cc:

The Honorable Ron Kirk  
United States Trade Representative  
Office of the United States Trade Representative  
600 17th St., NW  
Washington, DC 20508